

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* * * * *

UNITED STATES OF AMERICA)	Case No. 1:05cr47 DS
)	
Plaintiff,)	ORDER ON MOTION TO DECLARE
)	SENTENCING GUIDELINES
v.)	UNCONSTITUTIONAL
)	
JOSE OLIVER SANDOVAL)	
)	
Defendant.)	

* * * * *

Defendant Jose Oliver Sandoval has moved this court for an order declaring the United States Sentencing Guidelines unconstitutional. Mr. Sandoval argues specifically that the PROTECT Act constitutes an impermissible and unconstitutional encroachment on the powers traditionally performed by the judicial branch. The court disagrees.

As the United States points out, the constitutionality of the Guidelines has been highly litigated in the last couple of years. In *United States v. Booker*, 543 U.S. 220 (2005), the United States Supreme Court remedied any constitutional infirmity that may have existed within the guidelines by making the guidelines advisory rather than mandatory. The proper standard of review for a sentence under the now-advisory guidelines is for reasonableness. *Id.* at 261. The Tenth Circuit has held that “a presumption of reasonableness attaches to a sentence within the guidelines” and that the guidelines “represent eighteen years’ worth of careful consideration of the proper sentence for federal offenses.” *United States v. Terrell*, 445 F.3d 1261, 1264-65 (2006)(citations omitted). This court is bound by *Booker* and its Tenth Circuit progeny.

The court also notes that Defendant's counsel has filed an identical motion before two other courts in this district. Both of those motions were denied. This court will therefore follow the precedent set by the United States Supreme Court, the Tenth Circuit Court of Appeals, and the other courts in this district who have denied motions similar to this one.

IT IS HEREBY ORDERED that Mr. Sandoval's Motion to Declare Sentencing Guidelines Unconstitutional is DENIED.

DATED this 25th day of June, 2007.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Sam", is written above a horizontal line.

DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT